

claims 1-117 as being pending.

The Examiner indicated that the inventions were patentably distinct and were restrictable as between the invention of Group I, including claims 1-25 and 38-85, drawn to a system for refilling a fuel cell, classified in class 141, subclass 351, and Group II, including claims 26-37 and 86-96, drawn to a method of refilling a fuel cell, classified in class 141, subclass 1.

The Examiner asserted that the inventions were related as process and apparatus for its practice, and that the inventions are distinct from each other under M.P.E.P. § 806.05(e) because the apparatus “can be used to practice another and materially different process such as one not requiring the movement of at least one fuel container and at least one electrolyte container to cause spent fuel from the fuel cell *to enter at least one spent fuel chamber ...*” (emphasis in original).

Applicant submits that the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, “an appropriate explanation” must be advanced by the Examiner as to the existence of a “serious burden” if the restriction were not required.

In particular, the Examiner has not shown that a concurrent examination of these groups would present a “serious burden” on the Examiner. In fact, the Examiner has acknowledged that the individual groups would be classified in the same class. Moreover,

P24727.A02

the Examiner has failed to provide an appropriate statement indicating that the search areas required to examine the invention of Group I would not overlap into the search areas for examining the invention of Group II, and vice versa.

Applicant respectfully submits that the search for the combination of features recited in the claims of the above-noted groups, if not totally co-extensive, would appear to have a very substantial degree of overlap. Because the search for each group of invention is likely to be substantially the same, Applicant submits that no undue or serious burden would be presented in concurrently examining Groups I and II. Thus, for the above-noted reasons, and consistent with the Office policy set forth above in M.P.E.P. § 803, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement in this application.

For all of the above reasons, the Examiner's restriction requirement is believed to be improper. Nevertheless, Applicant have elected, with traverse, the invention defined in Group I, in the event that the Examiner chooses not to reconsider and withdraw the restriction requirement.

Authorization is hereby given to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

P24727.A02

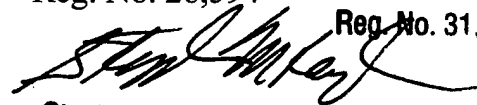
Should there be any questions, the Examiner is invited to contact the undersigned at the below listed number.

Respectfully submitted,
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